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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:22172 of 1994

DATED:12-06-2006

Between:

P.J.Christopher

..... PETITIONER

AND

1. The District Educational Officer, Kadapa and 4 others

.....RESPONDENTS

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ORAL ORDER:

Questioning the action of the respondents in recovering an amount of Rs.4,544-40 ps., representing the benefit given to the petitioner under the selection grade scale, from his retiral benefits in 1989, the present writ petition is filed. The petitioner also questions the action of the respondents in not extending to him the benefits of the 1986 Revised Scales of Pay.

2. Sri D.Linga Rao, learned counsel for the petitioner, would submit that inasmuch as a sum of Rs.4,544-40 ps. was recovered from the petitioner's retiral benefits without notice to him, the impugned order is in violation of principles of natural justice and is required to be set aside. Learned counsel would place reliance on **Bhagwan Shukla v . Union of India and others**. Learned counsel would submit that there has been no misrepresentation on the part of the petitioner and it is not the case of the respondents that the petitioner had availed the benefit, of the selection grade scale, by misrepresentation or fraud, and therefore, the amounts paid to the petitioner could not have been recovered by the respondents. Learned counsel would rely on **Shyam Babu Verma and others v. Union of India and others** in this regard.

3. The recovery of amounts paid, towards selection grade scale benefits for the sum of Rs.4,544-40 ps., was admittedly from the retiral benefits paid to the petitioner in 1989, consequent upon his retirement from service on 31-07-1987. The petitioner has kept silent for five long years and it is only in 1994 that he has chosen to approach this Court. On a query as to whether the writ petition should be entertained when the petitioner has approached this Court after a long lapse of five years, when he has not chosen to furnish any explanation in the affidavit filed in support of the writ petition regarding the inordinate delay in invoking the jurisdiction of this Court under Article 226 of the Constitution of India, Sri D.Linga Rao, learned counsel for the petitioner, would place reliance on the judgment of the Division Bench of this Court in **Scholars and Teachers Action Committee v. Andhra University** in support of his submission that in cases where the writ petition is admitted and the petitioner has a positively good case on merits, the delay in filing the writ petition must be overlooked. Learned counsel would also place reliance on **M.R.Gupta v. Union of India and others** in support of his submission that where the pay of an

employee is erroneously fixed contrary to the rules, the question of limitation would not arise.

4. It is well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is discretionary. One of the grounds for refusal by this Court to exercise discretion, under Article 226 of the Constitution of India, is where there is undue delay on the part of the petitioner in invoking its jurisdiction, more so where there is no reasonable explanation for the inordinate delay.

5. While it is true, as held in the **Scholars and Teachers Action Committee[2],** that on admission of a writ petition the delay in invoking the jurisdiction of this Court may, in cases where the petitioner has a positively good case on merits, be overlooked, entertaining a belated writ petition, on its admission, is not a rule of law but a rule of practice based on sound exercise of discretion. As held by the Division Bench there is no lower limit and no period of limitation prescribed for filing a writ petition since entertaining a writ petition, which is belated, is a matter of discretion depending on the facts and circumstances of each case. It is for the Court to examine the facts in a given case in order to decide as to whether this Court's jurisdiction under Article 226 of the Constitution of India should be exercised.

6. While it is true that wrong fixation of pay would be a continuing wrong for which no limitation can be prescribed the question which arises for consideration is as to whether the petitioner's challenge to the action of the respondents must be examined on its merits when there is no explanation forthcoming for the inordinate delay of more than five years in invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

7. In **State of M.P. and others v. Nandlal Jaiswal and others,** the

Supreme Court held thus:

> "……Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction……

8. In the absence of any explanation for the delay of more than five years from the date on which the amount was admittedly recovered from the petitioner's retiral benefits in 1989, even if no third party rights are affected, I see no reason to exercise discretion under Article 226 of the Constitution of India to entertain a belated challenge to the action of the Government in recovering the sum of Rs.4,544-40 ps.

9 . The Writ Petition is accordingly dismissed. However, in the circumstances, without costs.

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12th June, 2006

SKM